



# The independence of media regulatory authorities in Europe

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**The independence of media regulatory authorities in Europe**

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# The independence of media regulatory authorities in Europe

**Kristina Irion**

**with Giacomo Delinavelli, Mariana Francese Coutinho, Ronan Ó Fathaigh, Tarik Jusić, Beata Klimkiewicz, Carles Llorens, Krisztina Rozgonyi, Sara Svensson, Tanja Kerševan Smokvina, Gijs van Til**





# Foreword

Despite Pablo Picasso's assertion that *to copy others is necessary, but to copy oneself is pathetic*, self-plagiarism is usually considered a minor sin, if any. Allow me then, dear reader, to quote here a paragraph from my foreword to our recent IRIS *Plus* on *The promotion of independent audiovisual production in Europe*:<sup>1</sup>

*In film, like in real life, we are not independent as such; we are or we become independent from something or somebody. Parents telling you what to do, an invading country or a bank which holds a mortgage on your house, you name it. The concept of independence means different things depending on the context.*

Just as these sentences apply to the independent production of films, they are equally applicable the relationship that media regulatory authorities maintain vis a vis the powers that be. In the matter at hand, the context is quite simple:

The regulation and supervision of the audiovisual sector, a fundamental pillar of the right to freedom of expression and information, must be placed in the hands of an institution that bows to no one, neither the government nor private third parties. Only then is it guaranteed that decisions affecting one of the most fundamental rights – indeed a cornerstone - of democracy are made without taking into consideration any spurious interests.

This is the theory. However, until recently no international instrument obliged a country to set up independent regulatory authorities in the media field. In principle, a country could decide not to have one, even if the exceptions (at least, at the European level) were rare. Moreover, every country has its own legal traditions and administrative practices, which makes for a varied picture of the role and powers of media regulatory authorities throughout Europe.

With the purpose of providing a harmonised framework for the activities of media regulatory authorities in the EU, the revised version of the Audiovisual Media Services Directive (AVMSD), which entered into force in the autumn of 2018, introduces an obligation for EU member states to designate one or more national regulatory authorities or bodies that are legally distinct from the government and functionally independent from their respective governments and from any other public or private body. It also outlines detailed rights and obligations for them.

This IRIS *Special* aims to bring clarity to the heterogeneous picture formed by the many different media regulatory authorities in Europe, and to advance understanding of the ways in which the revised AVMSD may have an impact on current legislation and practices.

Under the scientific coordination of our partner institution - the Institute for Information Law (IVIIR) of the University of Amsterdam - this publication includes country reports by Tarik Jusić (Bosnia and Herzegovina), Carles Llorens (Spain), Krisztina Rozgonyi

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<sup>1</sup> <https://rm.coe.int/iris-plus-2019-the-promotion-of-independent-audiovisual-production-in-/1680947bc8>.

(Hungary), Ronan Ó Fathaigh (Ireland), Giacomo Delinavelli (Italy), Gijs van Til (The Netherlands), Beata Klimkiewicz (Poland), Sara Svensson (Sweden) and Tanja Kerševan Smokvina (Slovenia). Furthermore, IViR's own research staff members Kristina Irion, Mariana Francese Coutinho and Gijs van Til provide analyses of the work of the Council of Europe in this field, and the evolution of independent supervisory authorities in the audiovisual media sector in European Union law, as well as a description of the INDIREG study and its methodology, together with an introduction and conclusions.

I would like to extend my warmest thanks to all of them.

Strasbourg, September 2019

**Maja Cappello**

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

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## 5. BA – Bosnia and Herzegovina

Tarik Jusić, Center for Social Research Analitika, Sarajevo, Bosnia and Herzegovina & University of New York in Prague, Czech Republic

### 5.1. Introduction

The media system in Bosnia and Herzegovina is ethnically and territorially fragmented,<sup>98</sup> is politically polarised, and has a weak advertising market that is too small to support all private media outlets. The public service broadcasting (PSB) system of Bosnia and Herzegovina consists of three broadcasters, each with one TV and one radio channel with national coverage.<sup>99</sup> Additionally, there are 38 terrestrial TV channels, 52 TV channels that broadcast via other electronic communication networks and 142 radio channels in the country, as well as three non-profit radio stations. There are also 40 distributors of audiovisual media services (33 provide their services via cable, seven via IPTV platform).<sup>100</sup> Article 30 of the revised AVMS Directive primarily affects the national Law on Communications in Bosnia and Herzegovina.<sup>101</sup>

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<sup>98</sup> The country consists of state-level institutions and two administrative units (entities) - the predominantly Serb *Republika Srpska* (Republic of Srpska) and the Bosniak-Croat Federation of Bosnia and Herzegovina - with the entities granted a high degree of autonomy, each having its own legislative, executive and judicial branches of government. The Federation entity is further decentralised, consisting of 10 cantons - four with Bosniak majority, four with Croat majority, and two mixed – each with its own government and elected legislature. In addition, the District of Brčko is a separate self-governing administrative unit under the sovereignty of the state.

<sup>99</sup> The PSB consists of: *Radiotelevizija Bosne i Hercegovine* (Radio and Television of Bosnia and Herzegovina or BHRT) at the state level; *Radiotelevizija Federacije Bosne i Hercegovine* (Radio and Television of the Federation of Bosnia and Herzegovina or RTVFBiH) at the level of the administrative unit of the Federation of Bosnia and Herzegovina; and *Radio Televizija Republike Srpske* (Radio and Television of Republika Srpska or RTRS) at the level of the entity of Republika Srpska.

<sup>100</sup> Communications Regulatory Agency, public register of licence holders, <https://rak.ba/brdcst-license-holders>.

<sup>101</sup> 'Zakon o komunikacijama' (Law on Communications), the Official Gazette of Bosnia and Herzegovina, 31/03, 75/06, 32/10, 98/12, <https://docs.rak.ba/articles/da724391-4a61-429b-8859-14d77fbfbf43.pdf>; <https://docs.rak.ba/articles/106b2bd7-4d39-4b82-a956-21e55d869e11.pdf>; <https://docs.rak.ba/articles/8ed64927-655f-4461-8940-722ef312c3c7.pdf>; <https://docs.rak.ba/articles/a0c1b5e8-8d0b-4388-9a76-5a732dc564f0.pdf>.

## 5.2. Communications Regulatory Agency

The national media regulatory body in Bosnia and Herzegovina is the *Regulatorna agencije za komunikacije* (Communications Regulatory Agency - CRA),<sup>102</sup> established in 2001. It is an independent, converged decision-making body<sup>103</sup> responsible for the regulation of the broadcasting and telecommunications sectors, the allocation of frequencies to broadcasters, including public service broadcasting, and the management of the frequency spectrum.<sup>104</sup>

### 5.2.1. Legal distinctiveness and functional independence

The CRA is legally distinct from the government, established as “a functionally independent and a non-profit-making institution with the status of a legal person under the laws of Bosnia and Herzegovina”.<sup>105</sup> The powers and responsibilities of the CRA are stipulated by the Law on Communications.<sup>106</sup> The functional independence of the CRA is high, as the Law grants sufficient and stable sources of funding and broad powers and enforcement mechanisms for its unhindered operation. The CRA has both policy-setting and policy-implementing powers and a set of enforcement measures ranging from oral warnings to the revocation of a broadcasting licence (for more on powers and duties, see below). The agency is protected from political interference in its day-to-day decision-making since there is no formal possibility to instruct the agency in its exercise of powers or interfere with its decision-making in individual cases.<sup>107</sup> According to Article 37(g) of the Law on Communications, other duties can be assigned to the CRA by the Council of Ministers although the Law does not specify what those could be, and no instances of such delegation of new duties have so far occurred.<sup>108</sup>

As is the case with other similar state agencies, the Council of Ministers and the Parliamentary Assembly have indirect influence over the CRA through the appointment procedures for its key decision-making bodies – the Council of the CRA and the Director-General (for more details on appointment procedures, see below).

The Council of the CRA provides guidelines for the Agency in strategic issues, adopts codes of practice and rules for broadcasting and telecommunications, and serves as an appellate body for decisions by the Director-General.<sup>109</sup> The CRA is managed by the

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Article 36, Law on Communications.

<sup>106</sup> Articles 3(3), 3(4), 37, 46, Law on Communications.

<sup>107</sup> Article 36, Law on Communications.

<sup>108</sup> Email correspondence with Ms. Helena Mandić, Director of Broadcasting, Communications Regulatory Agency (April 2019).

<sup>109</sup> Article 39(1), Law on Communications.

Director-General,<sup>110</sup> who reports to the CRA Council. The organisational units of the CRA are the Cabinet of Director-General, five specialised sections and several other departments. Among the five sections, of particular relevance for audiovisual media is the Section of Broadcasting with its three divisions: first, the Division of Licenses, Digitalisation, and Coordination in Broadcasting; second, the Division of Programming, Complaints, and Legal Regulation in Broadcasting; and third, the Division of Audiovisual Services and International Cooperation in Broadcasting.<sup>111</sup>

## 5.2.2. Impartial and transparent exercise of powers

The Agency is characterised by a transparent exercise of powers, with full decisions published on the official website of the regulator alongside information on its activities, annual reports, financial information, and other types of documents and materials.

There is no evidence of partial decision-making or treatment of media organisations. However, the agency regularly faces criticism from the media outlets subject to its fines, and in particular from public broadcasters.<sup>112</sup> Although in principle such criticism of the Agency has not been valid, it may nevertheless be damaging for the public perception of the CRA.

## 5.2.3. Competences, powers and accountability

The competences and powers of the CRA are broad and clearly defined. The Agency is responsible for regulating broadcasting and public telecommunications networks and services, as well as managing the radio frequency spectrum.<sup>113</sup> Its core objectives regarding the broadcasting and telecommunications markets are the promotion of fair competition, the encouragement of investment and innovation, the protection of copyright and ensuring the efficient use of radio frequencies.<sup>114</sup> Its duties with regard to audiovisual media include, inter alia, introduction and enforcement of rules on broadcasting, licensing broadcasters and monitoring their compliance with license conditions, allocation and management of the frequency spectrum, and maintaining a technical licence fee system for broadcasting.<sup>115</sup>

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<sup>110</sup> Article 40, Law on Communications.

<sup>111</sup> Bosnia and Herzegovina, Communications Regulatory Agency, "Organizational structure", <https://rak.ba/organisational-structure>.

<sup>112</sup> See for example: RTRS (2018), "*Programski savjet RTRS - RAK politički motivisan u kažnjavanju RTRS-a*", (Program board of the RTRS – CRA politically motivated in punishing RTRS), <https://lat.rtrs.tv/vijesti/vijest.php?id=292590>.

<sup>113</sup> Article 3(3), Law on Communications.

<sup>114</sup> Article 3(4), Law on Communications.

<sup>115</sup> Article 37, Law on Communications.

The Agency is accountable to the parliament and the government of Bosnia and Herzegovina. It is subject to an audit review by the Supreme Audit Institution (SAI) as well as to a regular annual review by independent auditors.<sup>116</sup> Additionally, the Agency prepares an annual report of its activities and finances which is submitted to the Council of Ministers of Bosnia and Herzegovina.<sup>117</sup>

With respect to procedural legitimacy, the CRA is required, before adopting any rules, to publish a draft rule and allocate at least 14 days for public consultations.<sup>118</sup> Although it is not required by law to do so, the CRA publishes all of its decisions and associated explanations. Furthermore, all relevant information and documents are easily accessible on the website of the Agency, and additional information can be requested in accordance with the Freedom of Access to Information Act.<sup>119</sup>

## 5.2.4. Adequate financial and human resources

The CRA's budget consists exclusively of revenues from licence fees. When grants are received for specific projects, they are accounted for separately, and are not part of the approved budget. The budget of the Agency has been stable over the last 10 years, rising from EUR 3.45 million in 2015<sup>120</sup> to EUR 3.83 million in 2018,<sup>121</sup> and the CRA has not requested any ad-hoc financial contributions from the state. The Agency enjoys sufficient autonomy when deciding how it will spend its budget. The budget for each fiscal year is first adopted by the CRA Council and then submitted by the Director General to the Council of Ministers for approval.<sup>122</sup> Until the final budget is approved by the Council of Ministers, the CRA operates according to the budget adopted by the CRA Council.

Even though the CRA is a self-financed body, its budget is part of the state budget of Bosnia and Herzegovina.<sup>123</sup> This means that the CRA has no direct control over its funds. Consequently, in cases where the state budget is not adopted on time, the funding for the CRA directly depends on decisions on temporary financing of state institutions.

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<sup>116</sup> Article 44(4), Law on Communications.

<sup>117</sup> Article 44(5), Law on Communications.

<sup>118</sup> Article 38, Law on Communications.

<sup>119</sup> Zakon o slobodi pristupa informacijama u Bosni i Hercegovini (Law on Freedom of Access to Information in Bosnia and Herzegovina), Official Gazette of Bosnia and Herzegovina, 28/00, [http://www.mpr.gov.ba/web\\_dokumenti/ZOSPI\\_-\\_B.pdf](http://www.mpr.gov.ba/web_dokumenti/ZOSPI_-_B.pdf).

<sup>120</sup> Zakon o proračunu institucija Bosne i Hercegovine i međunarodnih obveza Bosne i Hercegovine za 2016. godinu (Law on Budget of Institutions of Bosnia and Herzegovina and on international obligations of Bosnia and Herzegovina for 2016), Official Gazette of Bosnia and Herzegovina, 101/2015, December 30, 2015, <http://sllist.ba/glasnik/2015/broj101/Broj101.pdf>.

<sup>121</sup> Zakon o proračunu institucija Bosne i Hercegovine i međunarodnih obveza Bosne i Hercegovine za 2018. godinu (Law on Budget of Institutions of Bosnia and Herzegovina and on international obligations of Bosnia and Herzegovina for 2018), Official Gazette of Bosnia and Herzegovina, 8/2018, February 2, 2018, <http://sllist.ba/glasnik/2018/broj8/broj008.pdf>.

<sup>122</sup> Law on Communications, Article 44(1).

<sup>123</sup> Zakon o finansiranju institucija Bosne i Hercegovine (The Law on Financing of Institutions of Bosnia and Herzegovina), Official Gazette of Bosnia and Herzegovina 61/04, Art. 9(4).

The budget of the Agency for the current year (2019) has not been published on its website but is integrated into the overall budget of the state institutions of Bosnia and Herzegovina published by the Ministry of Finance and Treasury of Bosnia and Herzegovina in the form of the Law on Budget.<sup>124</sup> Detailed annual financial reports for previous years are regularly published on the CRA's website.

CRA's staff fall into the category of civil servants, in accordance with the Law on Civil Service in the Institutions of Bosnia and Herzegovina<sup>125</sup>. However, the Agency has the right to determine which positions fall under the scope of the Law on Civil Service<sup>126</sup>. The CRA has so far applied this exception to all of its staff members, meaning that it manages its human resources independently, i.e. outside of the procedures for hiring as defined by the Law on Civil Service. Nevertheless, the Agency cannot independently manage compensation schemes for its employees, since its salaries were defined by the Law on Salaries and Compensations in Institutions of Bosnia and Herzegovina in 2008.<sup>127</sup> Nevertheless, so far this has not had a major negative effect on its capability to recruit skilled staff.

## 5.2.5. Adequate enforcement powers

Overall, the CRA is respected as a regulator – there is a high level of compliance with the rules, decisions and sanctions it issues to broadcasters. This is a result of a broad set of enforcement measures available to the CRA and applicable proportionally to violations. These enforcement powers include: oral and written warnings; inspections; demands for cessation of activities; financial penalties not exceeding EUR 75 000 in the case of deliberate or negligent violation of laws, regulation, codes or licence provisions or not exceeding EUR 150 000 in the case of repeated violations; orders for temporary interruption of broadcasting, and, *ultima ratio*, the revocation of a licence.<sup>128</sup>

The CRA also has powers to undertake all necessary steps to stop the operation of a telecommunications or broadcasting network or service if it is operated without a licence,<sup>129</sup> and has monitoring and information collection powers necessary for the assessment of compliance with licensing conditions, rules and regulations.<sup>130</sup> The law

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<sup>124</sup> [https://www.mft.gov.ba/bos/index.php?option=com\\_content&view=article&id=144&Itemid=111](https://www.mft.gov.ba/bos/index.php?option=com_content&view=article&id=144&Itemid=111).

<sup>125</sup> Zakon o državnoj službi u institucijama Bosne i Hercegovine (Law on Civil Service in the Institutions of Bosnia and Herzegovina), Official Gazette of Bosnia and Herzegovina 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09 and 8/10.

<sup>126</sup> Law on Communications, Article 43.

<sup>127</sup> Zakon o plaćama i naknadama u institucijama Bosne i Hercegovine (Law on Salaries and Compensations in Institutions of Bosnia and Herzegovina), Official Gazette of Bosnia and Herzegovina 50/08; 35/09; 75/09; 12/09; 32/12; 42/12; 50/12; 32/13; 87/13; 87/13; 75/15; 88/15; 16/16; 94/16; 72/17; 25/18, [http://www.mft.gov.ba/bos/images/stories/zakoni/2008/ZAKON\\_O\\_PLACAMA\\_BOSANSKI\\_50\\_08.pdf](http://www.mft.gov.ba/bos/images/stories/zakoni/2008/ZAKON_O_PLACAMA_BOSANSKI_50_08.pdf).

<sup>128</sup> Article 46, Law on Communications.

<sup>129</sup> Ibid.

<sup>130</sup> INDIREG (2011), p. 299.

enforcement agencies in Bosnia and Herzegovina are required to assist the Agency in the enforcement of its decisions if requested by the CRA.<sup>131</sup>

## 5.2.6. Appointment and dismissal procedures

So far, the appointment of the key decision-making bodies of the CRA - the Council of the Agency and the Director-General<sup>132</sup> - has been the most contentious issue impinging the requisite degree of independence.

The Council consists of seven members, appointed by the Parliamentary Assembly of Bosnia and Herzegovina for a period of four years, with a possibility of a single reappointment.<sup>133</sup> Candidates for the CRA Council are required to have experience in the telecommunications or broadcasting sectors, while “officials in legislative or executive functions at any level of government, or members of political party organs, shall not be named as candidates for the membership of the Council of the Agency.”<sup>134</sup>

Based on a proposal from the Council of Ministers, the Parliamentary Assembly of Bosnia and Herzegovina establishes an ad-hoc Commission mandated to implement the procedure for the appointment of the CRA Council. The ad-hoc Commission consists of an equal number of representatives from the government and non-governmental sectors, and is tasked with publishing a vacancy call for the Council members and submitting a list of the 14 best candidates to the Council of Ministers.<sup>135</sup> Within 30 days of receiving the list, the Council of Ministers proposes to the Parliamentary Assembly seven candidates from the list to be appointed as the members of the Council of the CRA.<sup>136</sup> The Parliamentary Assembly is then expected to formally appoint the members of the council within 30 days.<sup>137</sup> Nevertheless, if the Parliamentary Assembly rejects one or more of the nominated candidates, it provides reasons for the rejection and requires the Council of Ministers to submit a new proposal within 30 days.<sup>138</sup> If the Council of Ministers fails to respond to such a request, or if the Parliamentary Assembly rejects the second proposal by the Council of Ministers, the Parliamentary Assembly is required to immediately start a new public vacancy procedure for the appointment of the members of the CRA Council.<sup>139</sup>

The members of the Council can be dismissed before the end of their mandate by the Parliamentary Assembly of Bosnia and Herzegovina in the case of illness, conviction of a crime punishable by imprisonment, a conflict of interest, and a violation of the

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<sup>131</sup> Article 46, Law on Communications.

<sup>132</sup> Article 36, Law on Communications.

<sup>133</sup> Article 39(2), Law on Communications.

<sup>134</sup> Article 39(12), Law on Communications.

<sup>135</sup> Article 39(4), Law on Communications.

<sup>136</sup> Article 39(5), Law on Communications.

<sup>137</sup> Article 39(6), Law on Communications.

<sup>138</sup> Article 39(7), Law on Communications.

<sup>139</sup> Article 39(8), Law on Communications.





agency's Code of Ethics.<sup>140</sup> However, the Law on Communications does not specify the procedure for appointment of new members of the CRA Council in the case of removal of existing members before the end of the term of their mandate. In addition, the Law does not provide any stipulation regarding the possibility of the removal of the Council of the CRA as a whole.

There are a number of substantial problems with the appointment procedure for the CRA Council, which significantly undermine the level of transparency and efficiency of the procedure, exposing the CRA to undue influence from the Council of Ministers and the Parliamentary Assembly. In brief, the amended Law on Communications from 2012 creates substantial confusion with regard to roles and responsibilities of the Parliamentary Assembly and the Council of Ministers, as well as regarding the procedures, criteria and timeline for the appointment of the members of the Council of the CRA, effectively making the procedure non-transparent and highly inefficient and unpredictable. The Law provides for the possibility of an indefinite repetition of the procedure for the appointment of the CRA Council until political agreement is reached within and between the Parliament and the Council of Ministers.<sup>141</sup> It also provides for the possibility of an indefinite postponement of the start of the procedure of appointment of the members of the CRA Council upon the expiration of its mandate given the lack of a provision regarding the responsibilities and timeframe for starting the procedure.<sup>142</sup> The role of the ad-hoc commission – which is supposed to be crucial for implementing the appointment procedure – is rendered meaningless given the lack of criteria for its establishment<sup>143</sup> and operation,<sup>144</sup> or the extent of political influence on its decisions. Hence, the legal framework creates multiple loopholes for the exercise of undue political pressure in the process of the appointment of the CRA Council which can pose a significant threat to the normal functioning of the Council and of the Agency as a whole. As an illustration, at the moment of writing of this report, the current CRA Council has had the technical mandate for 15 months because the Council of Ministers and the

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<sup>140</sup> Article 42, Law on Communications.

<sup>141</sup> Law on Communications, Article 39(8).

<sup>142</sup> The Law (Article 39(4)) does not specify the nature of the relationship of the Parliamentary Assembly to the proposal by the Council of Ministers regarding the start of the appointment procedure – can the assembly reject the proposal of the Council of Ministers and what happens if it does so or if it fails to act upon the proposal? The Law also does not specify when the procedure for the appointment of the members of the CRA Council is to be started, i.e. when the Council of Ministers should send the proposal for the start of the procedure to the Parliamentary Assembly of Bosnia and Herzegovina – it only states that the first such procedure after the adoption of the amendment from 2012 must take place within 15 days of publication of the amendment in the Official Gazette of Bosnia and Herzegovina, but provides no direction as to when the procedure should be started with regard to any future rounds of appointments of the CRA Council.

<sup>143</sup> Article 39(4) of the Law on Communications does not specify the criteria for the appointment of the members of the ad-hoc commission. Unclear is: what is meant by “representatives from governmental and non-governmental” sectors; what competencies of such representatives should be; how and by whom they are to be nominated and selected; and how many members the ad-hoc commission should have.

<sup>144</sup> It is unclear how, and based on what criteria, the ad-hoc commission makes decision about the shortlisted candidates.

Parliamentary Assembly failed to initiate the appointment procedure in a timely manner with the official end of its mandate.<sup>145</sup>

The CRA is managed by a Director-General, nominated by the Council of the Agency based on the public vacancy announcement, and approved by the Council of Ministers within 30 days of its receipt of the nomination.<sup>146</sup> The Director-General, who has a term of four years renewable only once, reports to the Council of the Agency, and is responsible for decision-making and the management of the CRA. The Director-General can be nominated only from among candidates with experience in the telecommunications or broadcasting sectors. The Director-General can be dismissed by the Council of Ministers of Bosnia and Herzegovina only under exceptional circumstances, such as illness, conviction of a crime punishable by imprisonment, conflict of interest, resignation, failure to perform duties as described in law, and violation of the Agency's Code of Ethics.<sup>147</sup> However, the appointment of the Director-General has been heavily politicised. After the term of the previous Director-General ended in 2007, the Council of Ministers did not approve the appointment of the new Director-General selected according to the Law,<sup>148</sup> and so the incumbent Director-General retained a technical mandate until 2015, when the new Acting Director-General was appointed by the Council of the Agency and then formally approved in April 2016.

The Law on Communications provides incompatibility rules for key CRA staff in respect to other state and party functions, while financial relationships with stakeholders from the communications sectors are required to be declared only in the case of a conflict of interest. In the case of a conflict of interest, the Council members must abstain from the decision-making.<sup>149</sup> However, there are no rules that prevent Council members from being employed by regulated entities after their term in office. The Director-General and senior staff cannot have financial relationships with stakeholders.<sup>150</sup> The Law on Communications forbids the nomination of government officials or members of political party organs for the position of Director-General or as members of the Council of the CRA.<sup>151</sup> In the case of non-appointment of new members of the Council or of the Director-General, previous holders of the position continue their work with a technical mandate until the appointment procedure is completed.

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<sup>145</sup> See for example: Er. M. (2018). "Kompletnom Vijeću RAK-a istekao mandat, Federacija BiH blokirala izbor novih članova" (The mandate of all members of the CRA Council has expired), Klix.ba, <https://www.klix.ba/vijesti/bih/kompletnom-vijecu-rak-a-istekao-mandat-federacija-bih-blokirala-izbor-novih-clanova/180630010>.

<sup>146</sup> Article 40, Law on Communications.

<sup>147</sup> Article 42, Law on Communications.

<sup>148</sup> Article 36, Law on Communications.

<sup>149</sup> Article 39, Law on Communications.

<sup>150</sup> Ibid., Art. 39.

<sup>151</sup> Article 40, Law on Communications.

### 5.2.7. Appeal mechanisms

Appeals against decisions of the Director-General are directed to the Council, whose decisions are final and binding in an administrative procedure. A judicial review of the Council's decisions can be initiated before the State Court of Bosnia and Herzegovina. Pending the outcome of the appeal, the decision of the national regulatory authority stands.<sup>152</sup>

## 5.3. Conclusion

The current Law on Communications in Bosnia and Herzegovina, which applies to the CRA, is largely aligned with the criteria for regulatory independence as stipulated by Article 30 of the 2018 AVMS Directive. The most significant problem with the law pertains to the eventuality of an inconclusive - and potentially drawn-out ad infinitum - procedure for the appointment of the members of the Council of the Agency. The Law also does not provide guidance regarding the procedure for the appointment of individual Council members when an incumbent member is dismissed before expiration of his/her term due to illness, conflict of interest or misconduct.

In order for the Law on Communications in Bosnia and Herzegovina to be aligned with Article 30 of the 2018 AVMS Directive, it may well be necessary to further strengthen the safeguards of the CRA's legal and functional independence by revising Article 39, which stipulates the procedures for appointing the members of the Agency's Council, to ensure that the procedure is coherent, clear, transparent, efficient and does not allow undue political influence by the government or parliament. Further amendments may be necessary to align the Law with Article 30, for example with regard to paragraph 'g' of Article 37 – which provides for the possibility for the Council of Ministers to delegate new duties to the CRA. Such paragraph may have to be removed from the Law since it is sufficient that the Council of Ministers sets the overall sectoral policy for broadcasting and telecommunications<sup>153</sup>. Alternatively, the Law may also specify under which circumstances and according to which procedure the Council of Ministers may directly delegate new tasks and duties to the Agency.

In any event, notwithstanding the legal provisions in force to protect the independence of the CRA, the question of their application in practice and how to ensure the de facto independence of the Agency may arise, particularly in view of the politicised nature of the appointment of its main decision-making bodies. Such a situation may require continuous scrutiny by civil society and in particular by the EU institutions in the context of conditionality mechanisms related to Bosnia and Herzegovina's EU accession process, in order to ensure the functional independence of the CRA.

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<sup>152</sup> Article 47, Law on Communications.

<sup>153</sup> Law on Communications, Article 3.